SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Rel. No. 8313 / October 23, 2003

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 48684 / October 23, 2003

Admin. Proc. File No. 3-9952

In the Matter of

ROBERT G. WEEKS
c/o James N. Barber
Suite 100, Bank One Tower
50 West Broadway
Salt Lake City, Utah 84101

OPINION OF THE COMMISSION

CEASE-AND-DESIST PROCEEDING

PENNY STOCK BAR PROCEEDING

Grounds for Remedial Action

Fraud

Sale of Unregistered Securities

Causing Issuer's Violations of Reporting and Recordkeeping Requirements

Violation of Internal Accounting Controls Requirement

Former de facto officer and director of mining company defrauded public investors by omitting and misstating material facts in connection with the offer and sale of securities, in that he concealed his role, and the roles of others, in the management of the mining company, and misstated material facts regarding the mining company's assets and operations. Former de facto officer and director also participated in the non-exempt sale of unregistered securities. Former de facto officer and director also caused mining company reporting and recordkeeping violations and failed to implement a system of accounting controls within the company. Held, it is in the public interest to

order respondent to cease and desist from committing or causing any violation or any future violations of the statutory provisions and rules he was found to have violated; to disgorge individually $171,500 plus prejudgment interest and to disgorge jointly and severally an additional $16,294 plus prejudgment interest; to pay a $200,000 civil money penalty; and, further, it is in the public interest to bar respondent from participating in any offering of penny stock.

APPEARANCES:

James N. Barber, for Robert G. Weeks.

Thomas D. Carter, for the Division of Enforcement.

Appeal filed: March 1, 2002
Last brief filed: July 8, 2002

I.

Robert G. Weeks ("Robert Weeks") appeals from the decision of an administrative law judge. The law judge found that Robert Weeks and two other individuals, Kenneth Weeks and David Hesterman, 1/ willfully violated Section 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder when they made untrue statements of material fact and omitted material facts in their

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1/ The initial decision became final as to Kenneth Weeks and David Hesterman on October 22, 2002. David A. Hesterman, Securities Act of 1933 Rel. No. 8139 (Oct. 22, 2002), 78 SEC Docket 2313. That order makes final the law judge's findings that Kenneth Weeks and Hesterman violated the Securities Act, the Securities Exchange Act of 1934, and rules thereunder. It also makes final the law judge's order that Kenneth Weeks and Hesterman cease and desist from violation of specified provisions; that Kenneth Weeks disgorge $2,427,536, plus prejudgment interest, and an additional $16,294, plus prejudgment interest; that Hesterman disgorge $852,600, plus prejudgment interest; that Kenneth Weeks and Hesterman jointly and severally disgorge $273,513, plus prejudgment interest; that Kenneth Weeks and Hesterman pay civil money penalties of $200,000 and $250,000 respectively; and, finally, that Kenneth Weeks and Hesterman be barred from participating in any offer of penny stock.

communications with the public, investors, and prospective investors regarding the management and operations of Dynamic American Corporation ("DACO"). The law judge also found that Robert Weeks and the other individuals willfully violated Sections 5(a) and 5(c) of the Securities Act by offering to sell and selling unregistered DACO common stock between June 1995 and November 1996. The law judge additionally found that DACO, Robert Weeks, and the other individuals violated or caused violations of specified reporting and recordkeeping requirements of the Exchange Act, and various rules thereunder. 2/

The law judge ordered Robert Weeks to cease and desist from committing or causing any violations or future violations of the provisions the law judge found him to have violated, and ordered Robert Weeks to disgorge $171,500 plus prejudgment interest, as well as an additional $16,294 jointly and severally with Kenneth Weeks, his brother and a co-respondent below. 3/ The law judge also ordered Robert Weeks to pay a civil money penalty of $200,000. In addition, the law judge barred Robert Weeks from participating in any offering of penny stock.

This case centers on a small mining company, DACO, that, after acquiring Bolivian mining properties, touted to investors ambitious plans to develop those properties. The amended order instituting proceedings ("OIP") alleged that, during DACO's touted pursuit of Bolivian tin, Robert Weeks, and his co-respondents below, controlled DACO but did not disclose this in DACO's Commission filings. Rather, according to the OIP, those filings falsely represented that certain officers exercised managerial and directorial control when in fact they were

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2/ Specifically, the law judge found that Robert Weeks violated or caused the violation of the following provisions of the Exchange Act: Section 13(a) and rules thereunder, by failing to file timely periodic reports with the Commission, by filing reports that were materially false and misleading, and by failing to file other periodic reports; Section 13(b)(2)(A), by failing to make and keep required books and records; Section 13(b)(2)(B)(ii), by failing to devise and maintain satisfactory internal accounting controls; Section 13(b)(5), by willfully and knowingly failing to implement a system of internal accounting controls; and Sections 13(d), 13(g), and 16(a) and rules thereunder, by failing to report and update reports regarding his beneficial ownership of securities.

3/ See note 1 supra.

figurehead officers and directors dominated by Robert Weeks and his associates. The OIP alleged further that Robert Weeks and his co-respondents, operating through DACO, disseminated materially misleading communications, and issued millions of unregistered DACO shares and sold that stock into the United States in violation of the Securities Act. At the same time, according to the OIP, Robert Weeks caused DACO to fail to comply with its reporting and recordkeeping obligations.

What the record reveals is a fraudulent scheme that Robert Weeks and his former co-respondents have endeavored to obscure. The scheme itself was designed to be opaque, featuring "consultants" who acted as officers and directors of a corporate shell, titular officers and directors who testified they were "rubber stamps," and off-shore corporations whose officers, directors, and shareholders remain, in certain instances, unknown. Other central co-respondents below did not appear at the hearing and, subsequently, failed to prosecute their joint petition for review. Robert Weeks, who did appear, gave testimony that the law judge, for the most part, refused to credit; the record supports that determination. While the result is an evidentiary record replete with sketchy and at times inconsistent details, a clear picture of wrongdoing emerges. Robert Weeks' main contention on appeal is that he was only a consultant assisting DACO in its Bolivian venture on behalf of DACO's largest shareholder, Bolivian Tin & Silver, S.A. ("BTS"), and cannot be held responsible for any of the actions of DACO.

Robert Weeks contests the findings that he made material misrepresentations and omissions, participated in unregistered stock sales, and caused DACO's reporting violations, but, contradictorily, did not petition for review with respect to the findings that he caused DACO's violations of the books and records provisions of the Exchange Act and violated the Exchange Act's internal accounting controls provisions. 4/ We base our findings on an independent review of the record, except for those findings of the law judge that are not challenged on appeal.

II.

A. Dynamic American Corporation.

1. Pre-1995 activities.

4/ See note 2 supra.

DACO was organized in 1961 as a mining enterprise in Utah. In 1972 DACO became a reporting company under Section 12(g) of the Exchange Act 5/ when its Form 10 registration statement became effective. Its primary asset by the early 1990s was a 35,000-ton pile of tailings in Pioche, Nevada that DACO valued at $4.3 million on its audited financial statements.

In 1991, Jethro Barlow, a certified public accountant, became president and chairman of the board of directors of DACO. Barlow owned 52 percent of DACO's outstanding 7.2 million shares. In 1994, Barlow advised Nathan Drage, DACO's attorney, that he would be interested in acquiring a mining operation. At that time, another of Drage's clients, PanWorld Minerals International, Inc. ("PanWorld"), a mining operation based in Salt Lake City, Utah, was also interested in Bolivian mining ventures. 6/ Robert Weeks, then the President of PanWorld, explored Bolivian mining opportunities through Terry C. Turner, an American attorney practicing in La Paz, Bolivia and Utah.

Turner had a client in Bolivia, Fernando Pero, who wanted to sell his tin mines, tin-mining tailings, and tin smelter. Pero's mines were closed and required capital to be reopened. After a relocation, the smelter was only 75 percent to 85 percent

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5/ 15 U.S.C. § 78*l*(g).

6/ In 1994, the Commission was investigating PanWorld. This investigation culminated in the Commission's June 1997 filing of a civil complaint seeking injunctive relief in the United States District Court for the District of Utah. The complaint alleged that Robert Weeks, president of PanWorld, violated registration and antifraud provisions of the federal securities laws from 1989 through 1995 by preparing promotional materials designed fraudulently to inflate the value of PanWorld's mineral properties and to misrepresent the viability of its business operations, by soliciting a network of "consultants" to tout fraudulently Pan World stock, and by selling shares of inflated Pan World stock to public investors. In May 1998, a grand jury indicted Robert Weeks on three counts of securities fraud in connection with the sale of PanWorld stock in 1992 and 1993. According to the record, the criminal case was closed administratively. In March 2003, Robert Weeks consented to the entry of a permanent injunction and officer and director bar, settling the Commission's civil action. SEC v. Pan World, Case No. 2:97CV-04255T (D. Utah), Lit. Rel. No. 18036 (March 14, 2003), 79 SEC Docket 3306.

complete, operated on low-grade ore, and was barely breaking even. Additional smelting equipment would be required to resume full-scale operations. Pero, nonetheless, according to Robert Weeks, wanted a "firm" $40 million for his properties.

2. DACO and BTS.

In early 1995, Drage introduced Barlow to Robert Weeks, Kenneth Weeks, and David Hesterman. At that time, Robert Weeks represented to Barlow that he worked as a consultant for BTS, which the record indicates was a corporation organized under the laws of the Turks and Caicos Islands, British West Indies. The Weeks brothers, Hesterman, and Barlow discussed DACO's possible acquisition of Pero's Bolivian properties. Robert Weeks and his associates outlined a proposed transaction in which DACO, through BTS, would purchase the Pero holdings with DACO stock. The transaction was structured so that BTS would control DACO after the transaction. In June 1995, Barlow agreed to the transaction in return for payment of DACO's debts, monthly cash payments, and other compensation. Barlow expected that DACO would raise needed operating capital making use of DACO's access to United States capital markets.

Once Barlow agreed to the transaction on June 15, 1995, he began taking orders from Robert Weeks. After the transaction, BTS was DACO's largest stockholder with 15 million shares. At that time, Barlow did not know that Robert Weeks, Kenneth Weeks, and Hesterman owned a controlling interest in BTS. In an October 1996 telephone call, however, Robert Weeks specifically confirmed his control of BTS to Barlow. Barlow memorialized the conversation in contemporaneous notes reflecting that Robert Weeks stated that he, his brother Kenneth, and David Hesterman owned "3/5s [60%]" of BTS. 7/

DACO acquired the Pero properties in a two-step transaction in the Summer of 1995. 8/ BTS first acquired the tin properties from Pero for five million shares of DACO stock and an agreement

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7/ The law judge credited Barlow's corroborated testimony and refused to credit Robert Weeks' disavowal of his statement. We see no basis to question the law judge's determination. Laurie Jones Canady, Securities Exchange Act Rel. No. 41250 (Apr. 5, 1999), 69 SEC Docket 1468, 1480, pet. denied, 230 F.3d 362 (D.C. Cir. 2000).

8/ The actual dates of the transactions are not clear from the record.

to pay Pero for consulting services, although, at the time of this transaction, BTS owned no DACO shares. Robert Weeks was present when Turner (representing BTS) and Pero signed the sales agreement in Bolivia. BTS then transferred the tin properties to DACO in return for 20 million shares of DACO stock and assumption of the BTS obligations to Pero. Barlow signed the agreement for DACO, and Turner signed for BTS. Barlow did not negotiate the terms of the contract, nor did he communicate with Pero.

3. Management changes at DACO.

After June 1995, all of the significant business operations of DACO were conducted out of the same office suite in Salt Lake City where PanWorld, the Weeks brothers, and Hesterman had their offices. Barlow never again made an independent decision regarding DACO, although he served as its president until August 1, 1995, and remained a director of DACO thereafter. Barlow remained in Hilldale, Utah, communicating with Robert Weeks and Hesterman by telephone and facsimile transmission. Barlow did what Robert Weeks and David Hesterman told him to do. Robert Weeks and Hesterman each asserted to Barlow that they were consultants passing on instructions from BTS. Barlow had nothing in writing from BTS to confirm Robert Weeks' and Hesterman's authority.

On August 1, 1995, Robert Weeks and Hesterman asked Alan Burton, who at that time was completing a due diligence report on the Pero properties in Bolivia at Robert Weeks' request, 9/ to become president, chief executive officer, and chairman of the board of DACO. Robert Weeks sent Barlow the corporate resolutions appointing Burton, and Barlow signed them the same day. Barlow played no role in selecting Burton. Burton acknowledged that he "rubber stamped" corporate resolutions that Robert Weeks and Hesterman told him to sign and about which he knew nothing. Burton testified that, when he made inquiries of Robert Weeks and Hesterman regarding the resolutions, they either gave evasive answers or told him that the information requested was none of his business.

In August 1995, Robert Weeks offered a friend, J. Edwards Cox, a position as director and vice-president of DACO. Cox was a small-business entrepreneur without mining experience. Cox was aware that the Commission was investigating PanWorld during this

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9/ The report is discussed infra at II.A.5.

period 10/ and testified that he inferred that Robert Weeks, Hesterman, and Kenneth Weeks did not want to be identified publicly with the management of DACO. Cox never attended a DACO board meeting and made no management decisions for DACO. He performed routine clerical tasks and signed corporate resolutions as directed by Robert Weeks. Barlow, Burton, and Cox, although nominally the officers and directors of DACO during this period, did not manage DACO's operations or finances and indeed were only haphazardly and occasionally informed by Robert Weeks, Hesterman, and Kenneth Weeks regarding DACO management decisions.

4. DACO's marketing efforts.

In 1995 and 1996, Robert Weeks, Burton, and Cox traveled to major financial centers making presentations to banks and other financial institutions to seek out equity investors. As part of DACO's marketing campaign, Robert Weeks taped a television infomercial and radio talk-shows for broadcast. Robert Weeks also appeared and spoke at investor conventions open to the general public. DACO supplemented its in-person and radio and television promotional efforts by distributing press releases, investor letters, and other written materials, including DACO's Forms 10-Q and 10-K, the preparation and distribution of which were overseen by Robert Weeks and Hesterman. Certain of the written materials, which contained statements lacking factual support or omitted essential information, are identified below.

In July 1995, DACO sent shareholders a letter from the DACO/PanWorld office on DACO stationery announcing the Bolivian acquisition. The letter stated, without any factual basis, that the smelter had $2.5 million in annual revenue. The letter projected that an initial $500,000 investment would allow annual smelter revenue to increase to $12 million, and that a follow-on $3 million investment would increase annual smelter revenue to about $37 million. These projections lacked a factual basis. The letter forecast, also without basis, that the smelter, with an initial $500,000 investment, would have a fifty percent operating margin and noted, without a factual basis, that the mines showed "commercial values" in tin and other minerals worth about $100 per ton of ore. The letter included the disclosure that the mines required drilling to confirm the estimates.

On August 10, 1995, DACO followed its letter to shareholders with a press release announcing the Bolivian acquisition which it valued at $40 million. The release misleadingly characterized

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10/ See note 6 supra.

the smelter as retooled, modernized, and state of the art, when it was none of those things. The press release published the same $2.5 million current annual smelter revenue that DACO had included in the July shareholder letter, and made the same projections of increased smelter revenue and operating margin predicated on an initial $500,000 investment. While the release included a disclaimer that DACO lacked sufficient capital to make the needed investment, it further stated -- without basis -- that Burton was actively considering with the assistance of investment bankers and other consultants methods of recapitalizing DACO.

A second letter to shareholders was sent around September 1995. The letter suggested that the smelter had already acquired a "fuming furnace," a much needed piece of equipment that was not, in fact, acquired until May 1996. The letter also announced plans for immediate construction of a new facility for the smelter when there were no such plans. The letter falsely projected that the properties could generate up to $30 million in annual income after minor capital investments. The letter made several additional unsupported or incomplete claims regarding mineral reserves and tailings deposits. It stated without basis that one million tons of tailings had "proven" reserves of approximately one percent tin. It did not provide support for the statement that a German consulting firm had categorized the two million tons of underground ore as "proven/probable" with a concentration of 0.9 percent tin.

Some months later, on May 21, 1996, DACO issued a press release projecting that a $1 million financing arrangement it had just obtained would increase annual revenues from the Bolivian operations to $6 million. DACO had no basis for this projection.

Between June 1995 and Autumn 1996, DACO also distributed two fact sheets to potential investors. The fact sheets made the following statements without factual basis: the Bolivian tailings were "proven reserves" of one million tons and the underground ore constituted $157 million of proven, probable, possible, and prospective reserves. The fact sheets contained a pro forma financial report listing DACO's assets in excess of $44 million. One of the fact sheets projected, without factual support, that, if DACO invested $5.5 million in the Bolivian mines, DACO stock would be worth $17 per share in 18 months.

5. DACO's periodic Commission filings

Between June 1995 and November 1996, DACO filed with the Commission one annual report on Form 10-K, three quarterly reports on Form 10-Q, a transition report on Form 10-K relating

to its change of fiscal year-end, and an amended transition report on Form 10-K/1A. These reports were signed by Burton, Barlow, and Cox, variously, at the direction of Robert Weeks (and his associates) after Robert Weeks (and his associates) prepared the reports. The Form 10-K and all of the Forms 10-Q were filed late. All of the periodic reports valued the Bolivian mining assets at $38-$40 million and did not identify Robert Weeks' role within DACO. After the period ended September 30, 1995, DACO failed to file any reports with the Commission. 11/

On the unaudited balance sheet DACO filed with the Commission for the quarter ended September 30, 1995, DACO valued its Bolivian assets at $40 million, based on its issuance of 20 million DACO shares to BTS for those assets and its valuation of those DACO shares at $2 per share. The valuation at $2 per share had no objective basis. As Robert Weeks testified, the value was "an arbitrary figure." Similarly, DACO's quarterly report for the period ended June 30, 1995 had included an unaudited pro forma post-escrow balance sheet that valued the Bolivian mineral properties at $40 million. In the amended annual report DACO filed with the Commission for the fiscal year ended September 30, 1995, DACO valued the properties at $38.6 million to reflect a decline in the value of DACO shares. DACO, in its relevant Commission filings, also valued DACO's 35,000 tons of tailings in Pioche, Nevada at $4.3 million. This valuation reflected the historical cost of the tailings deposit which Barlow had carried forward in every periodic report since December 31, 1993. The Division's accounting expert opined that the value of the Pioche tailings was not reported in compliance with Generally Accepted Accounting Principles ("GAAP"). At no time in this proceeding has Robert Weeks rebutted that opinion.

Attached to the Form 10-Q DACO filed with the Commission for the period ending September 30, 1995 was a report by Burton, the mining engineer and investment banker who Robert Weeks later selected as DACO's putative president. While Robert Weeks and his associates negotiated DACO's acquisition of Pero's properties, Burton, at Robert Weeks' request, had been evaluating the Pero properties in Bolivia. Robert Weeks told Burton that Pero's firm selling price for the properties was $40 million and asked him to write a report ("due diligence report") supporting that price.

11/ The Commission ultimately revoked the registration of DACO's common stock in November 1999. See Dynamic American Corp., Rel. No. 42081 (Nov. 1, 1999), 70 SEC Docket 3187 (default order).

Burton's due diligence report included, among other things, a pro forma cash flow projection of returns under specific conditions from the smelter, the mines, and the tailings from the Pero properties. The most important condition was a $2 million investment in the smelter to allow smelting operations to earn a profit.

Burton testified that at the time he wrote the report he knew that the mines could not be represented as having "proven" reserves as that term is to be used in Commission filings. 12/ In Burton's opinion, the uncertainty regarding the reserves on the Pero properties did not diminish their attractiveness as an "exploration play." The report concluded, as Robert Weeks requested, that the properties were "clearly worth at least $40 million."

B. DACO's Issuance of Stock to Foreign Entities.

Beginning in June 1995, purportedly in reliance on Regulation S, 13/ DACO issued millions of shares of DACO stock to three off-shore corporations and one foreign individual. 14/ The DACO corporate resolutions authorizing the issuances were signed by the DACO directors at the direction of Robert Weeks and Hesterman. On June 15, 1995, for example, Barlow signed a corporate resolution issuing 600,000 shares of DACO stock to one of the companies, Stockton Ltd. ("Stockton"), pursuant to Robert Weeks' and other BTS consultants' orders. Director Cox testified below that he routinely conferred with Robert Weeks before he signed the resolutions, and rarely dealt with Hesterman in this regard. Most of the corporate resolutions recite that the shares were issued as compensation for consulting services rendered. The record, however, does not reflect that consulting services were provided.

12/ See Description of Property by Issuers Engaged or to Be Engaged in Significant Mining Operations Industry Guide 7, at ¶¶ (a)(1), (2) ("Industry Guide 7").

13/ Under Regulation S, 17 C.F.R. §§ 230.901 et seq., the registration provisions of Section 5 of the Securities Act do not apply to certain sales of securities that take place outside the United States.

14/ Before the issuance occurred, the DACO board increased the number of authorized shares from 10 million to 50 million.

1. Between June 1995 and July 1996, DACO issued 23.6 million shares of DACO stock to Stockton. Stockton was Kenneth Weeks' creation; he had retained Management and Services Company, Ltd. ("MASCO") -- a firm in the Bahamas that formed corporations in various jurisdictions, provided services to them, and, in some instances, provided nominee officers and directors for them -- to form Stockton. MASCO and its president Robert Cordes established Stockton as a Nevis, West Indies, corporation on June 28, 1995. On Kenneth Weeks' instructions, MASCO then established for Stockton various brokerage accounts and a bank account at the Canadian Imperial Bank of Commerce ("CIBC") in Freeport, Bahamas. Kenneth Weeks controlled Stockton's CIBC account. Stockton had no employees, and its only business was investing in securities.

The first stock issuance to Stockton occurred on June 15, 1995 (13 days before Stockton was incorporated), when DACO issued 600,000 shares of common stock to Stockton. On October 30, 1995, DACO issued another 1.75 million shares of common stock to Stockton. On February 5 and 15, 1996, DACO issued, respectively, an additional 3 million and 4.2 million shares of common stock to Stockton. Additional 5.5 million, 4 million, and 4.6 million share issuances of common stock to Stockton took place on March 1, May 1, and July 22, 1996.

There is no evidence in the record that Stockton paid for any of the shares. Relevant corporate resolutions state that the issuances were compensation for consulting services. There is no evidence that Stockton provided services. Neither Barlow nor Burton knew what services Stockton had performed for DACO. When Burton asked Robert Weeks and Hesterman for an explanation, he was told it was none of his business. Cordes, MASCO's president and the individual who formed Stockton, could not identify and claimed to not know what services Stockton provided for DACO.

2. Between June 30, 1995 and August 30, 1996, DACO issued 16 million shares of stock to Nevada County Mining, Inc. ("NCM"). NCM, like Stockton, was founded by MASCO on June 28, 1995, acting on the instructions of Kenneth Weeks. NCM's brokerage and bank accounts, like Stockton's, were established by MASCO. NCM had no employees, and its only business was investing in securities. As of August 7, 1996, NCM's name was changed to "Hamilton, Ltd." ("Hamilton") at the direction of Kenneth Weeks. Kenneth Weeks controlled NCM's bank account in the Bahamas.

The first stock issuance to NCM took place on June 30, 1995, when DACO issued 6 million shares of common stock to NCM. Additionally, on each of July 1, and August 30, 1996, DACO issued

5 million shares of common stock to NCM/Hamilton. 15/ According to relevant corporate resolutions, at least some of the shares were issued as compensation for consulting services. The record does not indicate that NCM/Hamilton provided any services.

3. DACO also issued 10.9 million shares of common stock to Fernando Cordero, a Bolivian national resident in Bolivia, between June 1995 and July 1996. According to DACO's filing with the Commission for the period ended September 30, 1995, the shares were issued as compensation for legal and consulting work Cordero did for DACO in Bolivia. Robert Weeks, Barlow, Burton, Cox, and Drage were unable to identify the nature of the services Cordero performed for DACO. Most of the shares issued to Cordero were later returned to DACO and reissued, purportedly in reliance on Regulation S, to either Stockton or NCM/Hamilton.

4. In November 1995, DACO issued 20 million shares to BTS, which, as indicated earlier, was a British West Indies corporation. A corporate resolution reflects that the shares were issued to compensate BTS for the decline in value of the Class B convertible preferred stock initially issued to pay for the acquisition of the Bolivian properties.

C. Foreign Entities Sell DACO Stock Into the United States for DACO Control Persons' Benefit.

From August 1995 to November 1996, Stockton and NCM/Hamilton sold about 33 million shares of DACO stock into the United States market. 16/ The proceeds from these sales amounted to more than $3.7 million. Stockton received $3,363,289 of the proceeds and NCM/Hamilton received $378,154. MASCO disbursed these proceeds as directed by telephonic instructions from Kenneth Weeks and Hesterman. MASCO disbursed varying amounts to Robert Weeks as well as to Kenneth Weeks, Hesterman, and other individuals. The

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15/ The stock was issued to Hamilton on July 1, 1996, although that name change had not yet taken effect.

16/ The Division's evidence included details of a DACO share purchase by a Dr. Nielsen and his wife, who purchased 850 shares of DACO at $9.00 per share (the peak of the market) on August 14, 1995, after which DACO's stock price began a steady and steep decline. On January 2, 1996, the Nielsens purchased an additional 800 shares of DACO at $0.21 per share. The Nielsens ultimately lost their entire DACO investment.

record establishes that Robert Weeks received a total of $171,500 from the proceeds of the sale of DACO shares.

Specifically, in September and October 1996 there were transfers totaling $50,900 from Hamilton's bank account to the bank account of Maria Baez, a friend of Robert Weeks. Later, another $3,000 transfer was effected from Hamilton's bank account to Baez's. Robert Weeks testified that these transfers were in fact transfers to him because he had no bank account of his own and lived with Baez. There were additional transfers to Robert Weeks directly, to a business Robert Weeks owned, and to Baez. These totaled $109,100. Another transfer of $8,500 was made to Robert Weeks from a corporation controlled by Kenneth Weeks. In addition, Kenneth Weeks withdrew and paid out on his own and Robert Weeks' behalf another $16,294, to satisfy nursing home and burial expenses of the Weeks' recently deceased father.

III.

A. Antifraud Violations.

Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder proscribe fraudulent conduct. To establish violations of these provisions it must be established that Robert Weeks misstated or omitted material facts, 17/ in connection with the offer, sale, or purchase of securities, and acted with scienter, the "mental state embracing intent to deceive, manipulate or defraud." 18/

The record reflects that from mid-June 1995 through November 1996, as charged in the OIP, Robert Weeks -- acting with scienter, in furtherance of his efforts to profit secretly from DACO stock sales -- made untrue statements of material fact

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17/ An omission or misstatement is material if there is a substantial likelihood that a reasonable investor would have considered the omitted or misstated fact important to his or her investment decision, and disclosure of the omitted or misstated fact would have significantly altered the total mix of information available. Basic Inc. v. Levinson, 485 U.S. 224, 231-32 (1988); TSC Indus., Inc. v. Northway, Inc., 426 U.S. 438, 449 (1976).

18/ Ernst & Ernst v. Hochfelder, 425 U.S. 185, 193 n.12 (1976). There is no scienter requirement for violations of Sections 17(a)(2) or 17(a)(3) of the Securities Act; negligence is sufficient. Aaron v. SEC, 446 U.S. 680, 701-02 (1980).

and/or omitted to state material facts to the public, to investors, and to prospective investors in the regulatory filings and promotional materials he prepared and disseminated, in his oral communications, and otherwise. The substantial efforts taken by Robert Weeks to conceal his role in the operation of DACO, the deliberate and complex groundwork required to consummate the scheme at issue, and the concerted publicity efforts in which Robert Weeks engaged with others establish Robert Weeks' requisite scienter in connection with the antifraud violations. We accordingly conclude that Robert Weeks willfully violated Section 17(a) of the Securities Act, and Section 10(b) of the Exchange Act and Rule 10b-5 thereunder. The various misstatements and omissions are specified immediately below.

1. Failure to disclose management of DACO.

The OIP charged that Weeks failed to disclose in DACO's periodic reports with the Commission and in other public communications he made on behalf of DACO that DACO's purported officers and directors were figureheads acting at the direction of the de facto officers and directors of the company -- Robert Weeks, Kenneth Weeks, and Hesterman. The record reflects that, as charged in the OIP, Robert Weeks served in a control capacity 19/ as a de facto "executive officer" and "director" at DACO, and that he failed to disclose in Commission filings, which he prepared and directed DACO's putative officers and directors to sign, and otherwise this fact and the additional fact that Barlow, Burton, and Cox, DACO's purported officers and directors, were figureheads acting at his (and others') direction. 20/

19/ "Control" for Exchange Act Sections 12(b) and (g), 13 and 15(d) registration and reporting purposes, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through ownership of voting securities, by contract, or otherwise. Exchange Act Rule 12b-2, 17 C.F.R. § 240.12b-2.

20/ See Exchange Act § 3(a)(7), 15 U.S.C. § 78c(a)(7) (for Exchange Act purposes, "[t]he term 'director' means any director of a corporation or any person performing similar functions with respect to any organization, whether incorporated or unincorporated."); 17 C.F.R. § 240.3b-7 (When used with reference to a registrant, the term "'executive officer" means a registrant's president, among others, who performs a policy making function, or any other

(continued...)

Robert Weeks ran DACO -- among other things, he engaged Burton as the putative president, chief executive officer and chairman of the board, and Cox, his personal friend, as a DACO director and vice president. He directed DACO's nominal directors to sign corporate resolutions issuing millions of DACO shares.

Further, during the period at issue, Barlow, Burton, and Cox, in fact, were figureheads -- they exercised neither authority nor influence in the management and operations of DACO. Cox specifically understood that he was acting in place of Robert Weeks and his associates who, Cox inferred, desired to avoid any public affiliation with DACO. Robert Weeks' undisclosed, surreptitious control of DACO, and the fact that the purported officers and directors were mere figureheads would have been material to the reasonable investor. 21/ Robert Weeks' argument that he was merely a "consultant" whose role need not be disclosed does not withstand scrutiny. 22/

2. Failure to disclose affiliation of DACO and BTS.

The OIP further charged that Robert Weeks fraudulently failed to disclose that DACO acquired the Bolivian properties from an affiliate in a non-arms-length transaction. The record establishes this charge. As entities under the common control of Robert Weeks, BTS and DACO were affiliates, and the transaction in which they engaged was not at arms length. 23/ This affiliate

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20/ (...continued)
person who performs policy making functions.)

21/ See SEC v. Kimmes, 799 F. Supp. 852, 856 (N.D. Ill. 1992), aff'd sub nom. SEC v. Quinn, 997 F.2d 287 (7th Cir. 1993) (identity of public company's officers and directors is material information).

22/ Compare SEC v. Enterprise Solutions, Inc., 142 F. Supp.2d 561, 574 (S.D.N.Y. 2001) (where putative consultant provided "management leadership" for company, negotiated acquisition by company, and hired CEO and negotiated compensation, evidence supported the conclusion that his activities on behalf of the corporation were "sufficiently similar to duties of an officer or director of the company that his involvement . . . ought to have been disclosed.").

23/ The affiliate relationship existed because Robert Weeks
(continued...)

information would have been critical to any reasonable investor or prospective investor in DACO, given that DACO's Bolivian properties were DACO's largest assets.

3. Baseless valuation of Bolivian mining properties.

The OIP charged that Robert Weeks baselessly valued the Bolivian mining properties in DACO's balance sheets. This charge also is established. In the balance sheets included in the company's Forms 10-Q for the quarters ended June 30, 1995 and September 30, 1995, DACO valued the Bolivian mining properties, including the smelter, at $40 million. In the amended annual report DACO filed with the Commission for the fiscal year ended September 30, 1995, DACO valued the properties at $38.6 million. High valuation of the Bolivian properties was crucial to Robert Weeks' plan to tout DACO stock and reap profits from its sale. 24/

There has been no credible basis advanced, other than the unchallenged $20 million valuation of the smelter, 25/ for the $40 million (or the reduced $38.6 million) valuation of the properties. 26/ The Division's accounting expert opined that

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23/ (...continued)
controlled BTS (with others) before the acquisition of DACO, and also controlled DACO once Barlow relinquished control of DACO in mid-June 1995. Robert Weeks' control of DACO is exemplified by Barlow's June 15, 1995 approval of a corporate resolution that Robert Weeks and others put before him and that issued 600,000 shares of DACO stock to Stockton. See supra at II.B.

24/ This high valuation was reiterated in marketing materials for which Robert Weeks bears responsibility.

25/ Neither the Division nor Robert Weeks petitioned for review of the law judge's finding that "[g]iving Respondents the benefit of the doubt about the value of the new smelter," the smelter was worth $20 million; accordingly we do not consider that aspect of the valuation.

26/ Robert Weeks asserts that the law judge erred in disregarding a preliminary business plan prepared by two individuals which Burton's report reviewed, and which valued the tailings on the Bolivian property at $81.5 million. Even DACO disregarded this preliminary business plan,
(continued...)

there was no basis for valuation of the DACO stock exchanged for the Bolivian properties: the stock value was arbitrary, and the value of the properties themselves was not reliably determinable. Robert Weeks' testimony that the stock value was "an arbitrary figure" confirms the expert's opinion. Accordingly, we conclude that the overstatements involved approximately $20 million, a material amount.

4. Misrepresentations regarding the status of DACO's Bolivian operations.

The OIP further charged Robert Weeks with fraudulently misrepresenting the status of DACO's Bolivian operations. The overall, false impression conveyed to the investing public by DACO's promotional materials was that DACO was a viable, well financed mining company operating a major Bolivian tin company. DACO, through Robert Weeks, among others, made numerous misleading representations to prospective investors and DACO shareholders, regarding DACO's plans and ability to fund the Bolivian operations, and the value of the properties and smelter. We find that these statements were fraudulent misrepresentations.

For example, DACO, through Robert Weeks and others, variously claimed that the Bolivian smelter was earning revenues of $2 to $2.5 million, and forecast that the smelter would earn $12 million on an operating margin of 50 percent. DACO asserted these baseless claims while the smelter was only 75 to 80 percent complete after a relocation, in need of additional equipment, and barely breaking even. Promotional materials also falsely claimed that the smelter was modernized and state of the art, when it was not.

5. Misleading reporting and promotion of mineral reserves.

The OIP, further, charged that Robert Weeks fraudulently misrepresented the proven and probable reserves of minerals located on the Bolivian mining properties. This charge, too, is established on the record. The Commission has used Industry Guide 7 since 1992 as an authoritative source of guidance for registrant reporting of reserve estimates and disclosure of facts

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26/ (...continued)
choosing instead to file Burton's report with its quarterly Commission filings.

regarding mining operations. 27/ Industry Guide 7 applies to, among other documents that are filed with the Commission, quarterly and annual reports filed on Form 10-Q and Form 10-K respectively. 28/ At issue are certain representations made in Burton's due diligence report, which was attached to DACO's Form 10-Q filed for the quarter ended June 30, 1995 and thus subject to Industry Guide 7.

Burton's due diligence report was materially misleading in several respects. The report stated that a German consulting firm had classified two million tons of deposits as "in a proven/probable category." Combining the proven and probable reserve categories, as Burton did, was contrary to the explicit guidance of Industry Guide 7, which provides that reserves may be combined as "proven/probable" only if proven and probable reserves cannot be readily segregated. 29/ Burton had available a summary of the German report that segregated the two categories. Further, Burton reproduced the German consultants' reserve estimates, without knowing the definitions the German consultants used in evaluating the properties as proven or probable, and did not disclose that Burton did not know whether those definitions were the same as those mandated for use in Commission filings by Industry Guide 7.

In promotional materials distributed to prospective investors, produced under Robert Weeks' supervision, DACO made additional claims regarding the Bolivian properties' reserves,

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27/ See note 12 supra.

28/ 17 C.F.R. § 229.801(g) (Securities Act filings); 17 C.F.R. § 229.802(g) (Exchange Act filings). Industry Guide 7 does not apply to less formal communications, such as promotional materials, containing disclosures from mining industry registrants. Industry Guide 7, among other things, provides standard terminology for reports and specifies what information registrants must disclose in Commission filings, what information registrants may disclose (and under what conditions), and what information registrants may not disclose.

29/ Instruction 2 to Industry Guide 7 ¶(b)(5). Reserve estimates that are not proven or probable must not be disclosed unless disclosure is required by foreign or state law. Instruction 3 to Industry Guide 7 ¶(b)(5).

not subject to Industry Guide 7, 30/ but nonetheless materially misleading. Among these were the claim that there were "commercial values" of tin ore in the mines when there was no basis for knowing whether the ore could be extracted economically; claims based on the German consultant's report; and the fact sheets' discussion of "possible" and "prospective" reserves without explaining the limitations applicable to those terms.

6. Baseless valuation of Pioche, Nevada tailings.

The OIP, further, charged that Robert Weeks baselessly valued DACO's Nevada mineral assets in balance sheets included in DACO's periodic filings with the Commission. DACO valued the pile of tailings it owned in Pioche, Nevada at $4.3 million in DACO's balance sheets, which were included in DACO's 1994 and 1995 periodic reports filed with the Commission and distributed to prospective investors. It is uncontested that, as the Division's expert accountant opined, the tailings were not valued in accordance with GAAP. The Division's expert geologist opined that the Pioche tailings were worth no more than $1.6 million. This unchallenged testimony reflects that the tailings were overvalued by about $2.7 million, a material amount.

Robert Weeks does not defend the valuation, but claims that he cannot be held responsible for it because DACO had been valuing the tailings at $4.3 million well before he and his associates were ever involved with the company. The evidence establishes, however, that Robert Weeks was at least reckless with respect to this valuation matter. As the law judge reasonably inferred, Robert Weeks and his associates "were quite willing not to ask Barlow too many questions about how he valued the Pioche tailings in the first instance . . . and paid nothing of any consequence to Barlow in return for obtaining control of assets that were allegedly worth $4.3 million."

B. Sale of Unregistered Non-Exempt Securities.

The record also establishes that, as charged in the OIP, Robert Weeks violated Section 5 of the Securities Act. Section 5 prohibits the unregistered offer or sale of securities by "any

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30/ See note 28, supra.

person, directly or indirectly" in the absence of an exemption from registration. 31/ Specifically, Section 5(a) provides that:

> Unless a registration statement is in effect as to a security, it shall be unlawful for any person, directly or indirectly --
>
> > (1) to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise; 32/

Section 5(c) further provides:

> It shall be unlawful for any person, directly or indirectly, to make use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed as to such security 33/

It is undisputed that the stock issued by DACO to offshore entities and sold by those entities into the U.S. market was not registered under the Securities Act (DACO had issued the stock in question purportedly in reliance on Regulation S). Thus, these transactions violated Sections 5(a) and 5(c) of the Securities Act unless an exemption from the registration requirements was available. It is well-established that "[e]xemptions from the general policy of the Securities Act requiring registration are strictly construed against the claimant of such an exemption and the burden of proof is on the claimant." 34/ Evidence in support

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31/ See, e.g., Jacob Wonsover, Exchange Act Rel. No. 41123 (Mar.1, 1999), 69 SEC Docket 694, 701, pet. denied, 205 F.3d 408 (D.C. Cir. 2000); Michael A. Niebuhr, 52 S.E.C. 546, 549 (1995).

32/ 15 U.S.C. § 77e(a).

33/ 15 U.S.C. § 77e(c).

34/ Gearhart & Otis, Inc., 42 S.E.C. 1, 4-5 n.3 (1964) (citing SEC v. Ralston Purina Co., 346 U.S. 119 (1953)), aff'd, 348 F.2d 798 (D.C. Cir. 1965).

of an exemption must be explicit, exact, and not built on mere conclusory statements. 35/

No exemption from the registration requirements of the Securities Act applies to the transactions involving DACO stock. In particular, the safe harbor from registration provided by Regulation S for American stock issuances to off-shore persons, on which DACO purportedly relied, is unavailable because, among other things, at the time of the sales, the issuer, its affiliates, or persons acting on its behalf, were engaged in "directed selling efforts." Under Regulation S, these are "any activit[ies] undertaken for the purpose of conditioning the market in the United States for the securities being offered in reliance" on the exemption. From the Summer of 1995 through the Autumn of 1996, DACO, through Robert Weeks and others acting on DACO's behalf, was actively engaged in directed selling efforts promoting sales of DACO stock to United States investors. DACO began issuing stock to Stockton and other offshore entities in June 1995 and continued through August 1996. During this same period, Robert Weeks and Alan Burton were conditioning the market for Robert Weeks and others ultimately to benefit when the shares issued to foreign purchasers were resold in the United States through Robert Weeks' and his associates' nominee accounts.

The Regulation S safe harbor, further, is not available if, as is the case here, the facts demonstrate that the securities purportedly placed offshore under Regulation S are being placed offshore temporarily to evade registration requirements with the result that the incidence of ownership of the securities never leaves the U.S. market. 36/ As is clear from the instructions to Regulation S and our 1995 interpretive release on the rule, 37/ schemes involving parking securities with offshore affiliates of

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35/ V.F. Minton Securities, Inc., 51 S.E.C. 346, 352 (1993) (and authority there cited), aff'd, 18 F.3d 937 (5th Cir. 1994) (Table).

36/ "Preliminary Note 2" to Regulation S specifies that the provisions of Regulation S do not apply to sales of securities that are part of a plan or scheme to evade the registration requirements, even if the sales technically are in compliance with Regulation S. 17 C.F.R. §§ 230.901 (Preliminary Note 2). We reiterated Regulation S's unavailability in connection with schemes to evade registration.

37/ Problematic Practices Under Regulation S, Securities Act Rel. No. 7190 (Jun. 27, 1995), 59 SEC Docket 1998.

the issuer do not qualify for the Regulation S safe harbor since they are nothing more than sham offshore transactions structured to evade the Securities Act registration requirements. In this case, Stockton, NCM/Hamilton, and Cordero, the purported foreign residents who were issued DACO shares, were nominees controlled by Robert Weeks and his associates. The record demonstrates that these nominees were used as conduits for the unregistered distribution of shares in the United States.

Further, registration on Form S-8 allows an issuer to issue shares of stock as compensation to consultants provided that "bona fide services [are] rendered by [the] consultants," and that such services are not in connection with the offer or sale of securities in a capital-raising transaction. 38/ Consultants receiving stock issued pursuant to Form S-8 may not be used as conduits to investors. 39/ Form S-8 may not be abused to circumvent the registration requirement. With respect to the 150,000 DACO shares issued to Cordero that were registered on Form S-8, there is no record evidence establishing that Cordero was a bona fide consultant. Neither Barlow nor Burton knew what Cordero had done to benefit DACO, and, when asked, Robert Weeks refused to provide this information to Burton.

On appeal, Robert Weeks does not dispute the fact that Section 5 was violated. Rather, he claims that it was Hesterman and Kenneth Weeks who "engineered and executed a scheme under which DAC would issue large quantities of stock to 'consultants' including Stockton, Hamilton and Fernando Cordero, without registration under the Securities Act of 1933, in reliance on the exemption form Registration provided by Regulation S," and that "[t]hey arranged to resell those shares into the U.S. market through the efforts of Robert Cordes in reliance on the repatriation rules in place under Reg. S." We reject these claims as contrary to the record evidence which reflects that Robert Weeks, among other things, served as DACO's main contact for all of the off-shore stock issuance resolutions and benefitted directly and indirectly from the proceeds of the stock sales. We accordingly conclude that Robert Weeks willfully violated Sections 5(a) and 5(c) in connection with the sales of DACO stock.

C. Reporting and Recordkeeping Violations

38/ General Instruction A.1.(a) to Form S-8.

39/ Steven M. Scarano, Securities Act Rel. No. 7572 (Sep. 9, 1998), 67 SEC Docket 2794 (settled order).

The record establishes that, as charged in the OIP, Robert Weeks caused DACO to file Forms 10-Q and Forms 10-K during the relevant period that, in violation of Section 13(a) of the Exchange Act and rules thereunder, included materially false information and failed to include material information necessary to make the required statements, in the light of the circumstances under which they were made, not misleading. The information concerned, among other things, DACO's management, assets, and business operations. The record also establishes that, as charged in the OIP, Robert Weeks caused DACO's violations of the reporting rules premised on DACO's untimely filing of its reports and its failures to file a complete transition report on Form 10-K for the period ended September 30, 1995, 40/ and a Form 8-K reflecting, among other things, the change in corporate control of DACO.

Robert Weeks has not petitioned for review of the findings below that he caused DACO's violations of Exchange Act Sections 13(b)(2)(A) and 13(b)(2)(B)(ii). Section 13(b)(2)(A) requires issuers of securities registered pursuant to Section 12 of the Exchange Act to make and keep books, record and accounts which, in reasonable detail, accurately and fairly reflect its transactions and dispositions of assets. Section 13(b)(2)(B)(ii) requires every reporting company to devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for assets. Robert Weeks has also not petitioned for review of the law judge's findings that he violated Section 13(b)(5) of the Exchange Act by knowingly failing to implement a system of accounting controls for DACO. 41/

IV.

Robert Weeks has raised several issues regarding the law judge's conduct of the hearing in this matter. First, Robert Weeks vigorously objects to the law judge's rulings regarding the

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40/ DACO had previously reported using a calendar year reporting period.

41/ Having found significant violations of the antifraud, registration, and recordkeeping provisions of the federal securities laws, we have determined not to reach the additional charges of beneficial ownership reporting violations.

credibility of Terry C. Turner, the Bolivian attorney who worked with Robert Weeks. Robert Weeks claims, among other things, that the law judge wrongly denied Turner the protection of the attorney-client privilege found in Bolivian law, which Turner invoked during his testimony.

As a general rule, we accept a law judge's credibility finding unless the weight of the record suggests that we should not do so. 42/ Here, the record evidence supports the law judge's credibility findings. In answer to the question whether Robert Weeks or his associates were the owners of BTS, his client, Turner answered that they were not. When Turner then was asked to identify the shareholders, officers, and directors of BTS, he asserted attorney-client privilege under Bolivian law. After hearing argument on the issue, the law judge directed Turner to answer the question. Turner, complying with the law judge's direction, responded that he did not recall the identities of those who controlled BTS. The law judge found that memory lapse incredible. Because Turner answered the question put to him as directed by the law judge, we are not called to rule upon the law judge's interpretation of the law of privilege, but only whether Turner's asserted memory lapse was credible. We see no reason to disturb the law judge's finding that it was not.

In any event, we do not see how Robert Weeks would have benefitted had the law judge credited Turner's testimony regarding the BTS ownership issue. The record contains other evidence, which the law judge credited, 43/ that Robert Weeks himself advised Barlow that Robert Weeks, Kenneth Weeks, and Hesterman owned sixty percent of BTS. Weighed against Turner's general denial that those three individuals had any ownership interest, the reasoned conclusion is that Robert Weeks, in fact, was an owner of BTS.

Robert Weeks also objects to the law judge's refusal to admit into evidence, over the Division's objections, the Spanish-language portions of the Respondents' Exhibit 25. As the Division argues, the party proposing the admission of a foreign-language document into evidence must provide a verbatim

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42/ See, e.g. Canady, 69 SEC Docket at 1480-81; compare Kenneth R. Ward, Securities Act Rel. No. 8210 (Mar. 19, 2003), 79 SEC Docket 3035, 3055-56 (rejecting credibility findings when weight of the evidence is to the contrary), aff'd, 2003 WL 22213940 (5th Cir.) (unpublished disposition).

43/ See note 7 and accompanying text supra.

translation by a qualified interpreter. 44/ This common-sense requirement is essential to safeguard the ability of the Commission to give meaningful review.

Robert Weeks also claims that the law judge's asserted hostility towards him denied him a fair hearing. Robert Weeks contends that the law judge's initial decision demonstrates that hostility, particularly in the law judge's discussion of witness credibility. Certainly the law judge's findings reflect poorly on Robert Weeks. They are, however, amply supported by the record, and our review of the entire record persuades us that the law judge acted fairly.

V.

The law judge found that Robert Weeks' violations were willful and ordered him to cease and desist from committing or causing any violation or future violation of the laws and rules he was found to have violated, and to disgorge individually $171,500 plus prejudgment interest and to disgorge an additional $16,294 plus prejudgement interest jointly and severally with his brother Kenneth Weeks. The law judge also ordered Robert Weeks to pay a civil money penalty of $200,000 and barred him from participating in any offering of penny stock.

In considering whether a cease-and-desist order is in the public interest, we look to our decision in KPMG for guidance. 45/ In evaluating the need for a cease-and-desist order we look to whether there is some risk of a future violation, and we consider that, in the ordinary case, and absent evidence to the contrary, a finding of a past violation raises a sufficient risk of future violation to warrant issuance of a cease-and-desist order. 46/ Further, "[a]long with the risks of future violations, we . . . consider our traditional factors in

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44/ This is the rule followed by the federal courts. See SEC v. Antar, 15 F. Supp.2d 477, 498 n.15 (D. N.J. 1998), and Zenith Radio Corp. v. Matsushita Elec. Ind. Co., Ltd., 513 F. Supp. 1100, 1135 (E.D. Pa. 1981) aff'd in part and rev'd in part on other grounds, 723 F.2d 238 (3d Cir. 1983), rev'd on other grounds, 475 U.S. 574 (1986).

45/ KPMG Peat Marwick LLP, Exchange Act Rel. No. 43862 (Jan. 19, 2001), 74 SEC Docket 384, 436, pet. denied, 2002 U.S. App. LEXIS 9119 (D.C. Cir. May 14, 2002).

46/ Id.

determining whether a cease-and-desist order is an appropriate sanction based on the entire record." 47/ These factors are the egregiousness of a respondent's actions; the isolated or recurrent nature of the violation; the degree of scienter involved; the sincerity of the respondent's assurances against future violations; respondent's recognition of the wrongful nature of his conduct; and the likelihood that the respondent will have opportunities for future violations. The record as a whole, our findings of violation, and our consideration of the traditional factors -- specifically the egregiousness of Robert Weeks' violations and the opportunity for future violations -- lead us to conclude, as did the law judge, that issuance of a cease-and-desist order against Robert Weeks is warranted.

Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act authorize us to order wrongdoers to disgorge their ill-gotten gains plus reasonable interest. Here the record reflects that Robert Weeks received a total of $171,500 from the proceeds of the scheme documented on this record. The payments were directed to Robert Weeks, his girlfriend, or a company that he owned, from Hamilton, Hesterman, and Kenneth Weeks. A disgorgement order in the amount of $171,500 plus interest is justified on this record.

The Division sought and obtained from the law judge an award directing that Robert Weeks pay an additional $16,294 of disgorgement jointly and severally with Kenneth Weeks. The record reflects that, on the death of their father, that amount was transferred from Hamilton's Bahamian bank account to the nursing home that cared for the Weeks' father, to the mortuary making the funeral arrangements, and to the Weeks' sister. Robert Weeks benefitted from these disbursements of ill-gotten gains, and a joint-and-several award against him in the amount of $16,294 also is justified on this record.

Section 21B of the Exchange Act authorizes the Commission to impose civil money penalties on any person who has willfully violated the Securities Act or the Exchange Act. 48/ The record

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47/ Id. The traditional factors considered in determining appropriate sanctions in the public interest are identified in Steadman v. SEC, 603 F.2d 1126, 1140 (5th Cir. 1979), aff'd on other grounds, 450 U.S. 91 (1981).

48/ Exchange Act § 21B(a)(1) and (2), 15 U.S.C. § 78u-2(a)(1) and (2). Willfullness is established here. A "willful

(continued...)

evidence supports the imposition of a civil penalty on Robert Weeks. The antifraud violations involved fraud, and deceit, caused unjust enrichment, and created a substantial risk of substantial losses to the investing public, thereby meriting third-tier penalties. The offer and sale of unregistered securities, and the recordkeeping and reporting violations warrant first-tier penalties. We find that a $200,000 civil money penalty -- the amount specified by the law judge -- serves the public interest.

Section 15(b)(6)(A) of the Exchange Act authorizes the Commission to bar a person from participating in an offering of penny stock if the person willfully violated federal securities

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48/ (...continued)
violation of the securities laws . . . means merely the intentional commission of an act which constitutes the violation and does not require that the actor "'also be aware that he is violating one of the Rules or Acts.'" Wonsover v. SEC, 205 F.3d 408, 414 (quoting Gearhart & Otis, Inc. v. SEC, 348 F.2d 798, 803 (D.C. Cir. 1965)). See also V.F. Minton Securities, Inc., 51 S.E.C. 346, 352 (1993), aff'd, 18 F.3d 937 (5th Cir. 1994) (Table) ("To have committed a 'willful' violation, a respondent need only have intentionally committed the act which constitutes the violation.").

laws, while the person was participating in the offering of any penny stock, and the bar is in the public interest. We find that there were serious and prolonged violations of the securities laws by Robert Weeks during the offering of DACO's stock, which was a penny stock, 49/ that Robert Weeks acted willfully, 50/ and

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49/ A security is excluded from the definition of "penny stock" if its market price is $5.00 or more per share. See Rule 3a51-1(d). Alternatively, if an issuer has been in continuous operation for more than three years and has net tangible assets in excess of $2 million, the issuer's stock is excluded from the definition of penny stock by Rule 3a51-1(g)(1). Current audited financial statements must demonstrate compliance with this minimum asset requirement. See Rule 3a51-1(g)(3)(1).

DACO's common stock traded at less than $5.00 per share throughout the period at issue, except for a period of a few weeks in July and August 1995. At the time Robert Weeks became involved with DACO, DACO's only tangible asset was the Pioche tailings pile. As concluded, supra, although DACO valued the tailings pile at $4.3 million, the tailings were worth no more than $1.6 million and Robert Weeks could not have relied on the accuracy of DACO's valuation. Moreover, as the law judge found, there was an irregularity on the face of DACO's "audited" financial statements for the fiscal year ended September 30 1995, which "precluded anyone from relying on these financial statements": the independent auditor's certification letter was dated July 5, 1995, an obvious impossibility for an issuer with more than two months still remaining in its fiscal year. Based on the foregoing, we conclude, as did the law judge, that DACO's stock was a penny stock throughout the relevant period, except for those days between July 7 1995 and August 22, 1995, when it traded at or above $5.00 per share.

50/ See supra note 48.

that a penny stock bar is in the public interest. Accordingly, we have determined to bar Robert Weeks from participating in any offering of penny stock.

An appropriate order will issue. 51/

By the Commission (Chairman DONALDSON and Commissioners GLASSMAN, GOLDSCHMID, ATKINS and CAMPOS).

Jonathan G. Katz
Secretary

51/ We have considered all of the parties' contentions. We have rejected or sustained them to the extent that they are inconsistent or in accord with the views expressed in this opinion.

UNITED STATES OF AMERICA
before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C.

SECURITIES ACT OF 1933
Rel. No. 8313 / October 23, 2003

SECURITIES EXCHANGE ACT OF 1934
Rel. No. 48684 / October 23, 2003

Admin. Proc. File No. 3-9952

In the Matter of

ROBERT G. WEEKS
c/o James N. Barber
Suite 100, Bank One Tower
50 West Broadway
Salt Lake City, Utah 84101

ORDER IMPOSING REMEDIAL SANCTIONS

On the basis of the Commission's opinion issued this day, it is

ORDERED that Robert G. Weeks cease and desist from committing or causing any violations or any future violations of Sections 5(a), 5(c), and 17(a) of the Securities Act of 1933, Sections 10(b) and 13(b)(5) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b-5; and that Weeks cease and desist from causing violations or any future violations of Sections 13(a), 13(b)(2)(a), and 13(b)(2)(B)(ii) of the Exchange Act and Exchange Act Rules 13a-1, 13a-10, 13a-11, 13a-13, 12b-20, and 12b-25; and it is further

ORDERED that Robert G. Weeks disgorge $171,500 and pay prejudgment interest as described at 17 C.F.R. § 201.600(b), due from December 1, 1996, and that interest shall continue to accrue on all funds owed until they are paid; and it is further

ORDERED that Robert G. Weeks disgorge, jointly and severally with Kenneth Weeks, $16,294 and pay prejudgment interest as described at 17 C.F.R. § 201.600(b), due from December 1, 1996, and that interest shall continue to accrue on all funds owed until they are paid; and it is further

ORDERED that Robert G. Weeks pay a civil money penalty of $200,000; and it is further

ORDERED that Robert G. Weeks be barred from participating in any offering of penny stock, including acting as a promoter, finder, consultant, or other person who engages in activities with a broker, dealer, or issuer for purposes of the issuance or trading in any penny stock; or inducing or attempting to induce the purchase or sale of any penny stock.

Robert G. Weeks' payment of the civil money penalty and disgorgement orders shall be: (i) made by United States postal money order, certified check, bank cashier's check, or bank money order; (ii) made payable to the Securities and Exchange Commission; (iii) delivered by hand or courier to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, Virginia 22312 within thirty days of the date of this order; and (iv) submitted under cover letter which identifies Robert Weeks as the respondent in Administrative Proceeding No. 3-9952. A copy of this cover letter and check shall be sent to Thomas D. Carter, Counsel for the Division of Enforcement, Securities and Exchange Commission, 1801 California Street, Suite 1500, Denver, Colorado 80202; and it is further

ORDERED, that within sixty (60) days after payment of funds or other assets, in accordance with the disgorgement required by this Order, the Division of Enforcement shall submit a proposed plan for the administration and distribution of disgorgement funds in accordance with Rule 610 of our Rules of Practice.

By the Commission.

Jonathan G. Katz
Secretary